

SENATE BILL No. 483

September 10, 2015, Introduced by Senators JONES and SHIRKEY and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending sections 13a and 18f of chapter XIIIA (MCL 712A.13a and 712A.18f), section 13a as amended by 2012 PA 163 and section 18f as amended by 2012 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIIA

Sec. 13a. (1) As used in this section and sections 2, 6b, 13b, 17c, 17d, 18f, 19, 19a, 19b, and 19c of this chapter:

(a) "Agency" means a public or private organization, institution, or facility that is performing the functions under part D of title IV of the social security act, 42 USC 651 to 669b, or that is responsible under court order or contractual arrangement for a juvenile's care and supervision.

(b) "Agency case file" means the current file from the agency

1 providing direct services to the child, that can include the child
2 protective services file if the child has not been removed from the
3 home or the department ~~of human services~~ or contract agency foster
4 care file as ~~defined~~ **PROVIDED** under 1973 PA 116, MCL 722.111 to
5 722.128.

6 (c) "Attorney" means, if appointed to represent a child in a
7 proceeding under section 2(b) or (c) of this chapter, an attorney
8 serving as the child's legal advocate in a traditional attorney-
9 client relationship with the child, as governed by the Michigan
10 rules of professional conduct. An attorney defined under this
11 subdivision owes the same duties of undivided loyalty,
12 confidentiality, and zealous representation of the child's
13 expressed wishes as the attorney would to an adult client. For the
14 purpose of a notice required under these sections, attorney
15 includes a child's lawyer-guardian ad litem.

16 (d) "Case service plan" means the plan developed by an agency
17 and prepared under section 18f of this chapter that includes
18 services to be provided by and responsibilities and obligations of
19 the agency and activities, responsibilities, and obligations of the
20 parent. The case service plan may be referred to using different
21 names than case service plan including, but not limited to, a
22 parent/agency agreement or a parent/agency treatment plan and
23 service agreement.

24 (e) "Foster care" means care provided to a juvenile in a
25 foster family home, foster family group home, or child caring
26 institution licensed or approved under 1973 PA 116, MCL 722.111 to
27 722.128, or care provided to a juvenile in a relative's home under

1 a court order.

2 (f) "Guardian ad litem" means an individual whom the court
3 appoints to assist the court in determining the child's best
4 interests. A guardian ad litem does not need to be an attorney.

5 (g) "Lawyer-guardian ad litem" means an attorney appointed
6 under section 17c of this chapter. A lawyer-guardian ad litem
7 represents the child, and has the powers and duties, as set forth
8 in section 17d of this chapter. The provisions of section 17d of
9 this chapter also apply to a lawyer-guardian ad litem appointed
10 under each of the following:

11 (i) Section 5213 or 5219 of the estates and protected
12 individuals code, 1998 PA 386, MCL 700.5213 and 700.5219.

13 (ii) Section 4 of the child custody act of 1970, 1970 PA 91,
14 MCL 722.24.

15 (iii) Section 10 of the child protection law, 1975 PA 238, MCL
16 722.630.

17 (h) "Nonparent adult" means a person who is 18 years of age or
18 older and who, regardless of the person's domicile, meets all of
19 the following criteria in relation to a child over whom the court
20 takes jurisdiction under this chapter:

21 (i) Has substantial and regular contact with the child.

22 (ii) Has a close personal relationship with the child's parent
23 or with a person responsible for the child's health or welfare.

24 (iii) Is not the child's parent or a person otherwise related
25 to the child by blood or affinity to the third degree.

26 (i) "Permanent foster family agreement" means an agreement for
27 a child 14 years old or older to remain with a particular foster

1 family until the child is 18 years old under standards and
2 requirements established by the department of human services, which
3 agreement is among all of the following:

4 (i) The child.

5 (ii) If the child is a temporary ward, the child's family.

6 (iii) The foster family.

7 (iv) The child placing agency responsible for the child's care
8 in foster care.

9 (j) "Relative" means an individual who is at least 18 years of
10 age and related to the child by blood, marriage, or adoption, as
11 grandparent, great-grandparent, great-great-grandparent, aunt or
12 uncle, great-aunt or great-uncle, great-great-aunt or great-great-
13 uncle, sibling, stepsibling, nephew or niece, first cousin or first
14 cousin once removed, and the spouse of any of the above, even after
15 the marriage has ended by death or divorce. A child may be placed
16 with the parent of a man whom the court has found probable cause to
17 believe is the putative father if there is no man with legally
18 established rights to the child. A placement with the parent of a
19 putative father under this subdivision is not to be construed as a
20 finding of paternity or to confer legal standing on the putative
21 father.

22 (k) "Sex offenders registration act" means the sex offenders
23 registration act, 1994 PA 295, MCL 28.721 to 28.736.

24 **(l) "SIBLINGS" MEANS CHILDREN WHO HAVE 1 OR MORE PARENTS IN**
25 **COMMON. THE RELATIONSHIP CAN BE BIOLOGICAL OR THROUGH ADOPTION AND**
26 **INCLUDES SIBLINGS AS DEFINED BY THE AMERICAN INDIAN OR ALASKAN**
27 **NATIVE CHILD'S TRIBAL CODE OR CUSTOM.**

1 (2) If a juvenile is alleged to be within the provisions of
2 section 2(b) of this chapter, the court may authorize a petition to
3 be filed at the conclusion of the preliminary hearing or inquiry.
4 The court may authorize the petition upon a showing of probable
5 cause that 1 or more of the allegations in the petition are true
6 and fall within the provisions of section 2(b) of this chapter. If
7 a petition is before the court because the department of human
8 services is required to submit the petition under section 17 of the
9 child protection law, 1975 PA 238, MCL 722.637, the court shall
10 hold a hearing on the petition within 24 hours or on the next
11 business day after the petition is submitted, at which hearing the
12 court shall consider at least the matters governed by subsections
13 (4) and (5).

14 (3) Except as provided in subsections (5) and (6), if a
15 petition under subsection (2) is authorized, the court may release
16 the juvenile in the custody of either of the juvenile's parents or
17 the juvenile's guardian or custodian under reasonable terms and
18 conditions necessary for either the juvenile's physical health or
19 mental well-being.

20 (4) The court may order a parent, guardian, custodian,
21 nonparent adult, or other person residing in a child's home to
22 leave the home and, except as the court orders, not to subsequently
23 return to the home if all of the following take place:

24 (a) A petition alleging abuse of the child by the parent,
25 guardian, custodian, nonparent adult, or other person is authorized
26 under subsection (2).

27 (b) The court after a hearing finds probable cause to believe

1 the parent, guardian, custodian, nonparent adult, or other person
2 committed the abuse.

3 (c) The court finds on the record that the presence in the
4 home of the person alleged to have committed the abuse presents a
5 substantial risk of harm to the child's life, physical health, or
6 mental well-being.

7 (5) If a petition alleges abuse by a person described in
8 subsection (4), regardless of whether the court orders the alleged
9 abuser to leave the child's home under subsection (4), the court
10 shall not leave the child in or return the child to the child's
11 home or place the child with a person not licensed under 1973 PA
12 116, MCL 722.111 to 722.128, unless the court finds that the
13 conditions of custody at the placement and with the individual with
14 whom the child is placed are adequate to safeguard the child from
15 the risk of harm to the child's life, physical health, or mental
16 well-being.

17 (6) If a court finds a parent is required by court order to
18 register under the sex offenders registration act, the department
19 of human services may, but is not required to, make reasonable
20 efforts to reunify the child with the parent. The court may order
21 reasonable efforts to be made by the department of human services.

22 (7) In determining whether to enter an order under subsection
23 (4), the court may consider whether the parent who is to remain in
24 the juvenile's home is married to the person to be removed or has a
25 legal right to retain possession of the home.

26 (8) An order entered under subsection (4) may also contain 1
27 or more of the following terms or conditions:

1 (a) The court may require the alleged abusive parent to pay
2 appropriate support to maintain a suitable home environment for the
3 juvenile during the duration of the order.

4 (b) The court may order the alleged abusive person, according
5 to terms the court may set, to surrender to a local law enforcement
6 agency any firearms or other potentially dangerous weapons the
7 alleged abusive person owns, possesses, or uses.

8 (c) The court may include any reasonable term or condition
9 necessary for the juvenile's physical or mental well-being or
10 necessary to protect the juvenile.

11 (9) The court may order placement of the child in foster care
12 if the court finds all of the following conditions:

13 (a) Custody of the child with the parent presents a
14 substantial risk of harm to the child's life, physical health, or
15 mental well-being.

16 (b) No provision of service or other arrangement except
17 removal of the child is reasonably available to adequately
18 safeguard the child from risk as described in subdivision (a).

19 (c) Continuing the child's residence in the home is contrary
20 to the child's welfare.

21 (d) Consistent with the circumstances, reasonable efforts were
22 made to prevent or eliminate the need for removal of the child.

23 (e) Conditions of child custody away from the parent are
24 adequate to safeguard the child's health and welfare.

25 (10) If the court orders placement of the juvenile outside the
26 juvenile's home, the court shall inform the parties of the
27 following:

1 (a) That the agency has the responsibility to prepare an
2 initial services plan within 30 days of the juvenile's placement.

3 (b) The general elements of an initial services plan as
4 required by the rules promulgated under 1973 PA 116, MCL 722.111 to
5 722.128.

6 (c) That participation in the initial services plan is
7 voluntary without a court order.

8 (11) Before or within 7 days after a child is placed in a
9 relative's home, the department ~~of human services~~ shall perform a
10 criminal record check and central registry clearance. If the child
11 is placed in the home of a relative, the court shall order a home
12 study to be performed and a copy of the home study to be submitted
13 to the court not more than 30 days after the placement.

14 (12) In determining placement of a juvenile pending trial, the
15 court shall order the juvenile placed in the most family-like
16 setting available consistent with the juvenile's needs.

17 (13) If a juvenile is removed from his or her home, the court
18 shall permit the juvenile's parent to have frequent parenting time
19 with the juvenile. If parenting time, even if supervised, may be
20 harmful to the juvenile, the court shall order the child to have a
21 psychological evaluation or counseling, or both, to determine the
22 appropriateness and the conditions of parenting time. The court may
23 suspend parenting time while the psychological evaluation or
24 counseling is conducted.

25 (14) **REASONABLE EFFORTS SHALL BE MADE TO DO THE FOLLOWING:**

26 (A) **PLACE SIBLINGS REMOVED FROM THEIR HOME IN THE SAME FOSTER**
27 **CARE, KINSHIP GUARDIANSHIP, OR ADOPTIVE PLACEMENT, UNLESS THE STATE**

1 DOCUMENTS THAT A JOINT PLACEMENT WOULD BE CONTRARY TO THE SAFETY OR
2 WELL-BEING OF ANY OF THE SIBLINGS.

3 (B) IN THE CASE OF SIBLINGS REMOVED FROM THEIR HOME WHO ARE
4 NOT JOINTLY PLACED, PROVIDE FOR FREQUENT VISITATION OR OTHER
5 ONGOING INTERACTION BETWEEN THE SIBLINGS, UNLESS THE STATE
6 DOCUMENTS THAT FREQUENT VISITATION OR OTHER ONGOING INTERACTION
7 WOULD BE CONTRARY TO THE SAFETY OR WELL-BEING OF ANY OF THE
8 SIBLINGS.

9 (15) IF SIBLINGS CANNOT BE PLACED TOGETHER OR NOT ALL THE
10 SIBLINGS ARE BEING PLACED OUTSIDE OF THE HOME, THE COURT SHALL
11 DETERMINE WHETHER SIBLING VISITATION OR CONTACT WILL BE BENEFICIAL
12 TO THE SIBLINGS. IF SO, THE COURT SHALL ORDER SIBLING VISITATION OR
13 CONTACT TO THE EXTENT REASONABLE.

14 (16) ~~(14)~~ Upon the motion of any party, the court shall review
15 custody and placement orders and initial services plans pending
16 trial and may modify those orders and plans as the court considers
17 under this section are in the juvenile's best interests.

18 (17) ~~(15)~~ The court shall include in an order placing a child
19 in foster care an order directing the release of information
20 concerning the child in accordance with this subsection. If a child
21 is placed in foster care, within 10 days after receipt of a written
22 request, the agency shall provide the person who is providing the
23 foster care with copies of all initial, updated, and revised case
24 service plans and court orders relating to the child and all of the
25 child's medical, mental health, and education reports, including
26 reports compiled before the child was placed with that person.

27 (18) ~~(16)~~ In an order placing a child in foster care, the

1 court shall include both of the following:

2 (a) An order that the child's parent, guardian, or custodian
3 provide the supervising agency with the name and address of each of
4 the child's medical providers.

5 (b) An order that each of the child's medical providers
6 release the child's medical records. The order may specify
7 providers by profession or type of institution.

8 **(19)** ~~(17)~~—As used in this section, "abuse" means 1 or more of
9 the following:

10 (a) Harm or threatened harm by a person to a juvenile's health
11 or welfare that occurs through nonaccidental physical or mental
12 injury.

13 (b) Engaging in sexual contact or sexual penetration as
14 defined in section 520a of the Michigan penal code, 1931 PA 328,
15 MCL 750.520a, with a juvenile.

16 (c) Sexual exploitation of a juvenile, which includes, but is
17 not limited to, allowing, permitting, or encouraging a juvenile to
18 engage in prostitution or allowing, permitting, encouraging, or
19 engaging in photographing, filming, or depicting a juvenile engaged
20 in a listed sexual act as defined in section 145c of the Michigan
21 penal code, 1931 PA 328, MCL 750.145c.

22 (d) Maltreatment of a juvenile.

23 Sec. 18f. (1) If, in a proceeding under section 2(b) of this
24 chapter, an agency advises the court against placing a child in the
25 custody of the child's parent, guardian, or custodian, the agency
26 shall report in writing to the court what efforts were made to
27 prevent the child's removal from his or her home or the efforts

1 made to rectify the conditions that caused the child's removal from
2 his or her home. The report shall include all of the following:

3 (a) If services were provided to the child and his or her
4 parent, guardian, or custodian, the services, including in-home
5 services, that were provided.

6 (b) If services were not provided to the child and his or her
7 parent, guardian, or custodian, the reasons why services were not
8 provided.

9 (c) Likely harm to the child if the child were to be separated
10 from his or her parent, guardian, or custodian.

11 (d) Likely harm to the child if the child were to be returned
12 to his or her parent, guardian, or custodian.

13 (2) Before the court enters an order of disposition in a
14 proceeding under section 2(b) of this chapter, the agency shall
15 prepare a case service plan that shall be available to the court
16 and all the parties to the proceeding.

17 (3) The case service plan shall provide for placing the child
18 in the most family-like setting available and in as close proximity
19 to the child's parents' home as is consistent with the child's best
20 interests and special needs. The case service plan shall include,
21 but is not limited to, the following:

22 (a) The type of home or institution in which the child is to
23 be placed and the reasons for the selected placement.

24 (b) Efforts to be made by the child's parent to enable the
25 child to return to his or her home.

26 (c) Efforts to be made by the agency to return the child to
27 his or her home.

1 (d) Schedule of services to be provided to the parent, child,
2 and if the child is to be placed in foster care, the foster parent,
3 to facilitate the child's return to his or her home or to
4 facilitate the child's permanent placement.

5 (e) Except as otherwise provided in this subdivision, unless
6 parenting time, even if supervised, would be harmful to the child
7 as determined by the court under section 13a of this chapter or
8 otherwise, a schedule for regular and frequent parenting time
9 between the child and his or her parent, which shall not be less
10 than once every 7 days.

11 **(F) EFFORTS TO BE MADE BY THE AGENCY TO PROVIDE FREQUENT IN-**
12 **PERSON VISITATION OR OTHER ONGOING INTERACTION BETWEEN SIBLINGS**
13 **UNLESS THE COURT DETERMINES UNDER SECTION 13A OF THIS CHAPTER THAT**
14 **SIBLING VISITATION OR CONTACT WILL NOT BE BENEFICIAL TO 1 OR MORE**
15 **OF THE SIBLINGS.**

16 **(G) ~~(f)~~** Conditions that would limit or preclude placement or
17 parenting time with a parent who is required by court order to
18 register under the sex offenders registration act.

19 (4) Before the court enters an order of disposition, the court
20 shall consider the case service plan; any written or oral
21 information offered concerning the child from the child's parent,
22 guardian, custodian, foster parent, child caring institution,
23 relative with whom the child is placed, lawyer-guardian ad litem,
24 attorney, or guardian ad litem; and any other evidence offered,
25 including the appropriateness of parenting time, which information
26 or evidence bears on the disposition. The order of disposition
27 shall state whether reasonable efforts have been made to prevent

1 the child's removal from his or her home or to rectify the
2 conditions that caused the child's removal from his or her home.
3 The court may order compliance with all or any part of the case
4 service plan as the court considers necessary.

5 (5) If a child continues in placement outside of the child's
6 home, the case service plan shall be updated and revised at 90-day
7 intervals as required by the rules promulgated under 1973 PA 116,
8 MCL 722.111 to 722.128. The agency shall consult with the foster
9 parents when it updates and revises the case service plan, and
10 shall attach a statement summarizing the information received from
11 the foster parents to the updated and revised case service plan.
12 Updated and revised case service plans shall be available to the
13 court and all the parties to the proceeding. Within 10 days after
14 receipt of a written request, the agency shall provide the person
15 who is providing the foster care with the information itemized in
16 section ~~13a(14)~~ **13A(17)** of this chapter.

17 (6) To ensure that the case service plan addresses the child's
18 medical needs in relation to abuse and neglect, the department of
19 human services shall review a child's case with the child's
20 attending physician of record during a hospitalization or with the
21 child's primary care physician, but only if a physician has
22 diagnosed the child's abuse or neglect as involving 1 or more of
23 the following:

24 (a) Failure to thrive.

25 (b) Munchausen syndrome by proxy.

26 (c) Shaken baby syndrome.

27 (d) A bone fracture that is diagnosed as being the result of

1 abuse or neglect.

2 (e) Drug exposure.

3 (7) If a child is placed outside of his or her home and the
4 department of human services is required to review the child's case
5 with a physician under subsection (6), then in a judicial
6 proceeding to determine if the child is to be returned to his or
7 her home, the court must allow the child's attending physician of
8 record during a hospitalization or the child's primary care
9 physician to testify regarding the case service plan. The court
10 shall notify each physician of the hearing's time and place.

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.